

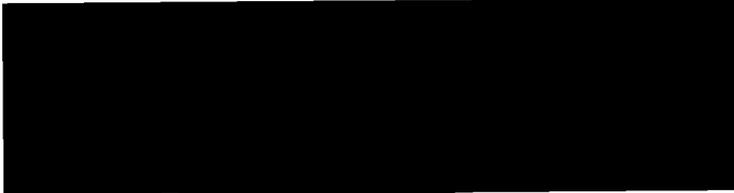
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



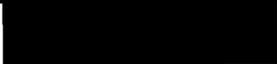
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

MAR 18 2010

WAC 07 230 54516

IN RE:

Petitioner:



Beneficiary:

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) remanded the matter for consideration under new regulations. The director again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO will affirm the director's decision.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as its "Supervision Pastor." On certification, the director determined that the petitioner had not established that the beneficiary had been working continuously in a qualifying religious occupation or vocation for the two years immediately preceding the filing of the petition.

The petitioner submitted no new documentation on certification.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States –

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before September 30, 2012, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before September 30, 2012, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The issue presented is whether the petitioner has established that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m) provides that to be eligible for classification as a special immigrant religious worker, the alien must:

(4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed. A break in the continuity of the work during the preceding two years will not affect eligibility so long as:

(i) The alien was still employed as a religious worker;

(ii) The break did not exceed two years; and

(iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

Therefore, the petitioner must show that the beneficiary had been working in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The petition was filed on July 26, 2007. Accordingly, the petitioner must establish that the beneficiary had been continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

With the petition, the petitioner submitted a July 14, 2007 letter in which it stated that as supervision pastor:

[The beneficiary's] salary will be \$50,000 per annum. His duty will be to supervise the other pastors in the performance of their pastoral duties conducting church services, marriage ceremonies, baptisms, and christenings, guiding the youth ministry, teaching and lecturing scriptural lessons, conducting funeral services and communion ceremonies. He has more than two years of prior experience as the pastor and supervising minister in the [petitioning organization] worldwide.

The petitioner submitted no other documentation with the petition. In a request for evidence (RFE) dated October 15, 2007, the director instructed the petitioner to:

Work History: Provide evidence of the beneficiary's work history for the two year period prior to the filing date. Provide experience letters written by the previous and current employers that include a breakdown of duties performed in the religious occupation for an average week. Include the employer's name, specific dates of employment, specific job duties, number of hours worked per

week, form and amount of compensation, and level of responsibility/supervision. In addition, **submit evidence that shows monetary payment, such as pay stubs or other items showing the beneficiary received payment.** If any work was on a volunteer basis, provide evidence to show how the beneficiary supported himself during the two-year period or what other activity the beneficiary was involved in that would show support.

Proffered Position: What is the beneficiary's job title? Provide a detailed description of the work to be done, including specific job duties, level of responsibility/supervision, and number of hours per week to be spent performing each duty. Include a daily and weekly schedule for the proffered position. List the minimum education, training, and experience necessary to do the job and submit documentary evidence to show that the beneficiary has met the requirement. Further, explain how the duties of the position relate to a traditional religious function.

Ordination. It is unclear whether the beneficiary will be working in a vocational capacity or a ministerial capacity. Will the beneficiary in a leader capacity in the petitioner's organization? Please clarify whether the beneficiary has authorization to conduct religious worship and perform other services usually performed by member so the clergy, in addition to religious worship and services performed by all clergy members. If so, submit evidence to show that the beneficiary has been ordained and/or given such authorization. Also provide a list of the requirement for ordination/authorization. [Emphasis in the original.]

In its January 4, 2007 response, the petitioner, through its senior pastor [REDACTED] stated that the beneficiary was the founder and general overseer of the petitioner's worldwide operations, and that he had been "recognized as ordained by the United Christian Church and Ministerial Association [UCCMA] in Cleveland, Tennessee." The petitioner also stated that the beneficiary had a doctorate degree in molecular genetics and had "written over one hundred religious titles." The petitioner further stated that:

The Beneficiary will conduct Seminars, Workers Meetings, Retreats, Conferences and Conventions which by their nature involve coordination with fellow Pentecostal members and their churches. His duties, therefore, will be as spiritual and organization leader for these activities. These activities will, in turn, aid the growth of churches in the Unite[d] States while also promoting the spiritual enhancement of the U.S. believer. The Beneficiary will also maintain a close contact with our Ministries on other continents and facilitate the above activities from his operational base here in the United States.

The petitioner submitted a copy of a certificate from [REDACTED] in Lagos, Nigeria, indicating that the beneficiary received an honorary Doctor of Divinity degree on

July 14, 2007, and a “ministerial ordination” certificate from the UCCMA. The ordination certificate indicated that “[p]ermanent ordination must be approved and certified each year,” that the certificate was authorized for the year 2008, and that the original license was issued on January 27, 2003. The petitioner submitted copies of flyers advertising the beneficiary as a speaker at events, photographs that counsel stated are of the beneficiary conducting religious services, a list that the petitioner stated was of Christian publications by the beneficiary, and a May 21, 2002 certificate recognizing the beneficiary as a “man of achievement in honour of an outstanding contribution to Christianity and Science” from the International Biographical Centre in Cambridge, England. The petitioner provided no documentation of any compensation received by the beneficiary during the qualifying period.

The USCIS regulation at 8 C.F.R. § 204.5(m)(11) provides:

Evidence relating to the alien's prior employment. Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:

- (i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.
- (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.
- (iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.

If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

In her Notice of Intent to Deny (NOID) issued on remand, the director advised the petitioner of the above regulation. However, the petitioner again failed to provide documentation of any compensation received by the beneficiary during the qualifying period.

In her certified decision, the director determined that the petitioner had failed to establish that the beneficiary had worked continuously in the same capacity as the proffered position. We note that

the regulation at 8 C.F.R. § 204.5(m)(4) provides that the prior religious work need not correspond precisely to the type of work to be performed. Nonetheless, the petitioner provided none of the required documentation to establish that the beneficiary had performed any work during the qualifying period.

Accordingly, the petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified for the position. While the petitioner states that the beneficiary is its founder and general overseer, it has submitted insufficient documentation to establish that the beneficiary is a minister within the meaning of the regulation. In denying the petition, the director stated:

[The beneficiary's] Doctor of Divinity certificate is an Honorary Degree, and the certificate of Ordination is issued by a non affiliated entity which requires no proof of religious training. The ordination certificate submitted can be obtained via the internet by anyone who requests and pays for it. The certificates submitted call into question the veracity of the accompanying evidence.

On appeal, counsel stated that "the Service has impugned the validity of the Beneficiary's religious training and qualifications" and that the beneficiary "is the founder and leader of a large congregation and has submitted evidence establishing this fact as well as his qualifications for the position offered."

The regulation at 8 C.F.R. § 204.5(m)(5) states:

Minister means an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(9) provides:

Evidence relating to the qualifications of a minister. If the alien is a minister, the petitioner must submit the following:

(i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and

(ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological institution is accredited by the denomination, or

(iii) For denominations that do not require a prescribed theological education, evidence of:

(A) The denomination's requirements for ordination to minister;

(B) The duties allowed to be performed by virtue of ordination;

(C) The denomination's levels of ordination, if any; and

(D) The alien's completion of the denomination's requirements for ordination.

The petitioner stated that the beneficiary possessed a doctorate degree in molecular genetics and a Doctor of Divinity degree from the Christian Faith Theological Seminary. The petitioner also provided a copy of an ordination certificate from the UCCMA. However, the director noted that the divinity degree was honorary and questioned the legitimacy of the ordination certificate. A review of the website of UCCMA, obtained from the letterhead provided on the petitioner's documents, indicates that one can "become a licensed/ordained minister" of the UCCMA by filling out an online application and paying an application fee of \$30.¹ There is no indication that UCCMA requires any prescribed theological education in order to be ordained.

The petitioner has submitted no documentation to establish that the beneficiary has any qualifications to be a pastor or that the petitioner's denomination requires any specific religious training or education for its ministers. The petitioner did not provide any of documentation outlined in subsection (iii) of the above-cited regulation. Accordingly, the petitioner has not

¹ www.unitedchristianchurch.org, accessed on February 25, 2010, a copy of which is included in the record.

established that the beneficiary is a minister within the meaning of the regulation and that he qualifies for the proffered position.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The AAO will affirm the certified denial for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The director’s decision of July 21, 2009 is affirmed.